

The Telecommunications Excise Tax is imposed upon the privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495. (This is a GIL).

December 7, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 19, 2001. As we indicated when we contacted you, we do not have enough information regarding the services provided to be able to respond with a Private Letter Ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

In accordance with Title 2: Governmental Organization, Subtitle D: Code Departments-Revenue

Section 1200.110 Private Letter Rulings

As outlined in section 4) whether to issue a private letter ruling in response to a letter-ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.

- b) There is certain information that must be included in each request for a private letter ruling:

On the following pages is to the best of the knowledge of all parties involved is the information as it relates to the above letter request.

I, as the business developer, am requesting a letter of determination as to the relevancy of the Telecommunications Tax for my customers for whom I am considering providing services as described in the following situation.

- 1) **Statement of Facts and pertinent information:**

Taxpayer: NAME/ADDRESS

I am currently providing remote monitoring and support of customer computers, remote monitoring and support of customer's network server, remote monitoring, and support of customer's other network devices, e-mail services, client WEB site hosting, and Network security services thru traditional on-site and conventional telephone wiring.

I am seeking to develop additional services using transmission from our radio tower(s) to radio receiving equipment located within the physical location of a client's business to provide the above services.

The single monthly fee charged our client would include installation charges not covered by basic installation fee, equipment rental charges, fees for the services noted above and will include the use of the equipment for a wireless connection to our towers as well as Internet access.

- 2) Relative contracts, licenses, and agreements -- there will be a contract between PERSON and those businesses requesting the service. A copy of the current contract is attached.
- 3) The tax period at issue will start in August of 2001 or sooner and will continue until such service is technologically obsolete.
- 4) To the knowledge of all parties concerned, no other such ruling exists in the review of the information obtained from the website as it relates to Telecommunications 35 ILCS 635/
- 5) The taxpayer is seeking clarification on the issue of whether or not the service to be provided is subject to the telecommunications tax.
- 6) No statement of contrary authority is available.
- 7) No trade secrets are deleted or contained in the request.
- 8) Signature appears on the bottom of this letter.

I am unaware of any fees due with this letter. If such a fee is required, please advise me immediately at the above address or phone.

It is my intent to start this business immediately. I need to be assured that the pricing to my customers is not subject to the telecommunications tax by the State of Illinois. The customers will all be located within the State of Illinois.

Thank you.

We hope that the following general information regarding the Telecommunications Excise Tax will be helpful.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a) "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d).

It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur in providing the service. Generally, the customers pay to their providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters would generally not be subject to the Telecommunications Excise Tax.

However, please note that persons providing customers with the Internet access described above, but who also provide customers the use of 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services. If, however, such Internet service providers do not separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service, they are not considered to be telecommunications retailers.

If Internet access service providers provide both transmission and data processing services, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c), enclosed. The statute does not require disaggregation on the customers' invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers' books and records, for audit purposes, such disaggregation need not be shown on the customers' invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed were for telecommunications, then none of the charges would be subject to tax.

If you do not charge your customers for telecommunications, but merely assess an access charge for an on-line information service, Telecommunications Excise Tax would not be incurred. However, if you also charge your customers for telecommunications, you will need to disaggregate the access charges from the telecommunications in your books and records. You would then remit Telecommunications Excise Tax based upon the gross charges for the telecommunications you sell. If you do not disaggregate the access charges from the telecommunications charges, Telecommunications Excise Tax is incurred on the entire amount.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.